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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 United States of America,

10 Plaintiff,

11 v.

12 David Allen Harbour,

13 Defendant.  
14

No. CR-19-00898-001-PHX-DLR

**ORDER**

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16 Before the Court is Defendant's *ex parte* Rule 17(c) motion for issuance of  
17 subpoenas duces tecum related to Canyon Road (Doc. 232) and his *ex parte* motion to seal  
18 said motion (Doc. 231). Defendant has established that preserving the sealed and *ex parte*  
19 nature of his Rule 17(c) motion—within which he has risked divulging trial tactics in order  
20 to meet his burden of demonstrating that the *Nixon* standards are satisfied—is necessary to  
21 prevent Defendant's trial strategy from being revealed to the government. *See U.S. v.*  
22 *Nixon*, 418 U.S. 683, 699-700 (1974); *U.S. v. Sleugh*, 896 F.3d 1007, 1017 (9th Cir. 2018).  
23 Consequently, the Court will grant Defendant's motions.

24 Nevertheless, even where the Court has allowed a defendant to file an application  
25 for subpoena duces tecum that is *ex parte*, once the application is granted, as here, "it does  
26 not follow that the defendant is entitled to strategic advantage or tactical surprise." *U.S. v.*  
27 *Buntyn*, No. 1:20-cr-00708 KWR, 2020 WL 5657602, at \* 2 (D.N.M. Sept. 23, 2020)  
28 (quoting *U.S. v. Sellers*, 275 F.R.D. 620, 625 (D. Nev. 2011)). Rather, "the plain language

1 of Rule 17(c) authorizes the court to ‘direct the witness to produce the designated items in  
 2 court before trial or before they are to be offered in evidence,’ and once ‘the items arrive,’  
 3 to ‘permit the parties and their attorneys to inspect all or part of them.’” *Id.* (quoting Fed.  
 4 R. Crim. P. 17(c)).

5 Consequently, although the Court will permit Defendant's Rule 17(c) motion to  
 6 remain *ex parte* and under seal to prevent the disclosure of his trial strategy to the  
 7 government, it will direct that the government have access to the responsive material, itself,  
 8 once it is produced by the third parties.<sup>1</sup> See *United States v. Ellis*, No. 19-369, 2020 WL  
 9 6204340, at \*2 (W.D. Pa. Oct. 22, 2020). Particularly, the third-parties—BOK Financial  
 10 Services, Inc. and Praff, Kieffer & Company—shall produce, within 30 days and 60 days  
 11 of the date of this order, respectively, the requested materials either electronically to both  
 12 Defendant and the government, or to the Court, at which time the Court will notify both  
 13 parties that the documents are available for inspection and copying.

14 The materials ordered to be produced below, if not delivered to both sides  
 15 electronically, shall be delivered to:

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 17 The Chambers of District Judge Douglas L. Rayes  
 18 Sandra Day O'Connor United States Courthouse  
 19 401 W Washington Street  
 20 Phoenix, AZ 85003

21 **IT IS ORDERED** that Defendant's *ex parte* motion to seal (Doc. 231) is  
 22 **GRANTED**. Defendant's *ex parte* Rule 17(C) motion for issuance of subpoenas duces  
 23 tecum related to Canyon Road and the exhibits attached thereto (Doc. 232) shall be filed  
 24 under seal, along with the motion to seal (Doc. 231).

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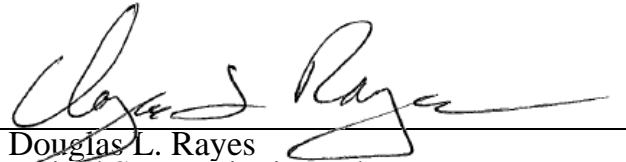
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<sup>1</sup> Defendant is not required to provide a copy of the subpoenas to the government.

1           **IT IS FURTHER ORDERED** that Defendant's *ex parte* Rule 17(C) motion for  
2 issuance of subpoenas duces tecum related to Canyon Road (Doc. 232) is **GRANTED**.  
3 The subpoenas, attached to the motion, shall be issued to the entities identified therein.  
4 The entities shall produce the responsive material in the manner described above. .

5           Dated this 7th day of April, 2021.

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9 Douglas L. Rayes  
10 United States District Judge  
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